

# Chaos envelops the Capitol, but lawmakers from both parties insist (insist!) they can still do their jobs

By **Ned Oliver** - February 7, 2019



*Lt. Gov. Justin Fairfax was surrounded by reporters inside the Capitol during the General Assembly session in February after sexual assault allegations against him surfaced. (Ned Oliver/Virginia Mercury)*

Lawmakers responded with a common refrain as roving packs of reporters chased them through the corridors of the Capitol this week seeking comment on the rolling scandal that's now grown to engulf the state's top three elected officials:

We're focused on the legislative work the people sent us here to do.

It's a brush-off for sure — few want to venture out on their own with a statement at this point.

But legislators from both parties also insist it's absolutely true, arguing the political chaos is unlikely to have a meaningful impact on the course of this year's legislative session, even as it unfolds at the always-hectic midway point, when bills cross from one chamber to the other.

While some staffers privately voiced skepticism at the business-as-usual posture, committees and floor sessions have indeed continued with an air of absolute normalcy.

Lawmakers [interviewed candidates](#) for a vacancy on the Supreme Court of Virginia on Tuesday.

And they continued work on a particularly convoluted [budget debate](#), which involves extensive input and negotiation from the state's chief executive, Gov. Ralph Northam, who has stopped venturing out in public after admitting and then [denying](#) appearing in a racist yearbook photo.

## Governor still represented in budget debates

"I'm communicating daily with (Northam's Secretary of Finance Aubrey Layne) as we always have and working with my colleagues in the Senate, so it's business as usual," says Del. Chris Jones, R-Suffolk, who chairs the House money committee.

It's the same story in the Senate, where Majority Leader Tommy Norment, R-James City, says there's been zero impact on the lawmaking process.

"Not at all," he says. "The chaos that may be going on with the Democrats is not impacting it. We're still working together collaboratively."

Top Democrats offered a similar line, although Senate Minority Leader Dick Saslaw of Fairfax, perhaps feeling a bit more embattled with his party suddenly in unprecedented turmoil, was more reluctant to share his assessment.



First he declined to weigh in, saying he didn't "want to comment on anything that's going on within 50 miles of Richmond," as his campaign manager, Andrew Whitley, physically blocked a reporter from approaching him.

With Whitley still serving as a human shield, Saslaw eventually offered a response in a tired-sounding voice.

“The budget’s doing fine,” he said. “We’re going to do fine. It all comes out in the wash. It always does.”

### **‘It’s like the dog in the burning room cartoon.’**

Not everyone is so confident. Some staffers say that while committees and floor sessions continue as always, few are paying attention and party employees who usually monitor the proceedings have been pulled elsewhere.

“It’s consuming all of our time,” said one Democratic aide, who spoke on the condition of anonymity to offer a candid assessment. “We have a precious amount of time. The budget dropped on Sunday. Everyone’s supposed to be reading it. I guarantee you the legislators are not looking at the budget right now.”

Efforts most likely to fall through the cracks are regional in nature, not partisan, such as pushes to increase transportation funding, the aide said, wondering whether Democrats would be able to mount a vigorous debate from their wounded posture when the budget hits the floor.

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*Virginia Attorney General Mark Herring. (Ned Oliver/Virginia Mercury)*

Another Capitol Square staffer voiced concern about the lack of attention being paid to the Supreme Court vacancy, in which a Republican [senator’s sister](#) is among those under consideration.

“Everyone is telling the media — it’s like the [dog in the burning room cartoon](#). This is fine,” said the person, who also spoke on the condition of anonymity. “We don’t know who is going to be governor.”

But others offered a tamer assessment, saying when the legislative gears begin turning, everything “just moves.”

“When these members are telling you they are focusing on session, they really are,” said a senior Republican aide.

## Northam goes underground, but begins signing bills

Because Democrats don't hold a majority in either the House or the Senate, their potential to sway the course of policy debates has always been limited. On top of that, many big discussions had already run their course by Friday, when news of the photo of one person in blackface and another in a KKK robe on Northam's medical school yearbook page was first reported.

Major Democratic priorities championed by Northam and his party — including a package of [gun control legislation](#) and a [push to ratify](#) the Equal Rights Amendment — have long since been voted down by the Republican majority.

Likewise, lawmakers have already reached agreement on legislation to reduce evictions, [clean up coal ash ponds](#) and provide a \$700 million economic incentive package for Amazon's new offices in Northern Virginia.

*Democratic Lt. Gov. Justin Fairfax speaks to reporters Monday in the Capitol. (Ned Oliver/ Virginia Mercury)*

Northam, who is able to get to his office from the Executive Mansion through an underground tunnel, [signed](#) the Amazon legislation Monday with neither fanfare nor formal public notice — a defensive crouch he can presumably hold as he continues to resist calls for his resignation.

As lieutenant governor, Justin Fairfax, who is [now facing a sexual assault accusation](#), presides over the Senate, a job that keeps him in front of the press and

his colleagues but is largely ceremonial. His official duties are limited to leading the floor sessions and breaking rare tie votes.

Attorney General Mark Herring, who admitted Wednesday to [also wearing black face](#), has no formal role in the legislative session, though his staffers frequently appear before committees to speak on bills.

## A tremendous distraction

But of course, with pressure building and calls for resignations being lobbed and renewed at all three men from all directions, things could change at any moment.

If any were to step down, it would trigger a potentially convoluted [line of succession](#) that, in the most extreme case, could end with Republican House Speaker Kirk Cox serving as governor.

And even without a resignation, no one denies the current environment poses a tremendous distraction in what is a typically staid and subdued environment.



**Julie Carey**  
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This photo illustrates how overwhelming the chaos is right now at Virginia's Capitol. St. Sen. Louise Lucas taking a moment as reporters surround her looking for comment on the latest disclosure that AG Herring wore blackface once in college [@nbcwashington](#)



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Camera crews sprint through the hallways. Lawmakers brace for contact with reporters before entering the corridors. Aides huddle together for hushed conversations.

The revelations on Tuesday that Herring had also worn black face appeared to weigh particularly heavily on members of the Virginia Legislative Black Caucus.

After a meeting with Herring, Sen. Lionell Spruill, D-Chesapeake, [cried](#) as he stood on Senate floor with Fairfax before session began. As the day wound to a close, Sen. Louise Lucas, D-Portsmouth, leaned against her car, head in her hand, surrounded by reporters.

Members of both parties appear to have landed on a common coping mechanism: Avoidance.

“Everybody was so fed up with it today they all left early,” noted an aide.

#### Ned Oliver

Ned, a Lexington native, has a decade’s worth of experience in journalism, beginning at The News-Gazette in Lexington, and including stints at the Berkshire Eagle, in Berkshire County, Mass., and the Times-Dispatch and Style Weekly in Richmond. He also has the awards to show for it, including taking a pair of first-place honors at the Virginia Press Association awards earlier this year for investigative reporting and feature writing. He is a graduate of Bard College at Simon’s Rock, in Great Barrington, Mass. Contact him at [noliver@viriniamercury.com](mailto:noliver@viriniamercury.com)



## How the House of Delegates' dreaded sub-committee system killed LGBT protections, driver's license suspension reform and, maybe, the ERA

By **Ned Oliver** - February 14, 2019



*The House of Delegates' Militia, Police and Public Safety Subcommittee No. 1 voted down nearly every gun control proposal over the course of about an hour in January. The committee includes four Republicans and two Democrats. (Ned Oliver/Virginia Mercury)*

What do the Equal Rights Amendment, driver's license suspension reform and legislation to ban housing discrimination based on gender or sexual orientation have in common?

They were all the subject of high-profile legislative pushes.

They all appeared to have enough bipartisan support to pass the General Assembly.

And, despite surviving the Senate, they're all likely to die without a vote on the floor of the House of Delegates, ensnared in the body's often-maligned system of subcommittees, where four or five members of the majority party wield the power to block just about anything that comes their way.

"The inequities, the lack of due process, the lack of transparency and fairness, I believe, are apparent," said Sen. Bill Stanley, R-Franklin County, whose legislation to end the practice of suspending driver's licenses for unpaid fines and court costs, which affects more than 600,000 state residents, died this week on a 4-3 vote in a House subcommittee dominated by two conservative former prosecutors.

He called it “rule by fiat.”

Grumbling about the House’s use of subcommittees to vet legislation is a perennial pastime, particularly after the midpoint of the session, when legislation that’s cleared the Senate hits the House.

The House speaker’s discretion to appoint committee chairs and decide which legislation goes where is a key component of the office’s power. The system lets leadership bury bills they don’t like and shield their caucus from uncomfortable or potentially politically damaging votes.

But complaints about how the House handles legislation have become more pronounced since the 2016 election, which cut the once sizeable Republican majority to 51-49.

“The killing of bills in subcommittee didn’t matter all that much when the Republicans had a two-to-one majority in the legislature,” said Stephen Farnsworth, a political scientist at the University of Mary Washington. “Something that wasn’t going to get through the committee wasn’t likely to pass on the floor anyway.”

Things are different now.

“There’s a reasonable chance that centrist-oriented legislation could pass on the floor if it ever got there. ... I think this is particularly galling for senators, whose Republican caucus isn’t as conservative as the House caucus. And things that pass comfortably in the Senate may still die in the House at 7:30 in the morning without all that much consideration,” Farnsworth said.

House leaders defend their use of subcommittees as a necessary tool to devote meaningful consideration to the 2,649 pieces of legislation introduced this year.

“There’s nothing nefarious about it,” said House Majority Leader Todd Gilbert, R-Shenandoah, who chairs the subcommittee that killed Stanley’s drivers license bill. “Not a lot of productive work happens at the full committee level. The subcommittee is there to actually get down into the policy issues and the wording to try to craft the legislation to be as precise as possible.

“It’s only ever a problem when people don’t get their way.”

The Senate uses subcommittees too. But their actions are only taken as recommendations to the full committee, generally around 15 people — a number likely to include a broader cross section of opinion.

In the House, if legislation is voted down in subcommittee, it won’t go before the full committee, in most cases 22 members, for consideration.

Stanley called the Senate's approach more democratic.

"We give everybody a fair shot," he said. "There was not one delegate's bill last year or this year that did not get a full hearing by a committee once it passed over from the House."

*The six member Privileges and Elections Subcommittee No. 1 blocked the Equal Rights Amendment from advancing last month. (Ned Oliver/Virginia Mercury)*

Sometimes, bills introduced in the House or passed over from the Senate never even get a subcommittee hearing. It's up to the chair what legislation to take up and what legislation to ignore.

That was the fate of [a bill](#) introduced by Del. Roxann Robinson, R-Chesterfield, to ban housing discrimination based on sexual orientation and gender identity.

It was first referred by Speaker Kirk Cox, R-Colonial Heights, to the committee he chairs on rules, which he uses as a holding pen while negotiations play out behind the scenes. After apparently being unable to reach a consensus, it was then referred without discussion to General Laws, where it was never heard.

The bill is backed by LGBTQ rights groups and was pitched by Robinson as a common-sense protection that polling shows is supported by a majority of Republican voters in the state. It's not clear if the Senate version will be handled similarly.

Sometimes there are efforts to make procedural moves to sidestep the power of the subcommittee, but they are rarely successful.

Advocates for the [Equal Rights Amendment](#) are still hopeful that the legislation can be heard on the floor. The resolution failed in subcommittee and a procedural vote to get the full committee to take up the resolution also failed. [House rules](#) say if the subcommittee does not recommend legislation by a majority vote, “the chairman need not consider the legislation in the full committee.”

Their “Hail Mary pass,” as they described it in an email to supporters, is a rules change on the floor of the House of Delegates that would allow a full vote anyway. It’s a rarely seen move.

Del. Hala Ayala, D-Woodbridge, began the process Thursday evening, [filing a resolution](#) that now needs to be read by the clerk for five days in a row before a vote can take place.

Gilbert filed a [dueling resolution](#) attempting to block the procedural workaround. It specifies that the rule change proposed by Ayala can only be adopted by a vote of two-thirds of the House, rather than a simple majority.

He called Ayala’s approach “very unorthodox and very unfortunate way to try to drive a specific agenda, and we just don’t do that in House rules, and my rule is intended to solidify that longstanding practice.”

Ayala, meanwhile, said she believes the ERA is so important it calls for extraordinary measures, calling the rule change Gilbert proposed in response to her’s as “hostile toward women.”

*The story has been updated to add additional comment from delegates.*

#### Ned Oliver

Ned, a Lexington native, has a decade’s worth of experience in journalism, beginning at The News-Gazette in Lexington, and including stints at the Berkshire Eagle, in Berkshire County, Mass., and the Times-Dispatch and Style Weekly in Richmond. He also has the awards to show for it, including taking a pair of first-place honors at the Virginia Press Association awards earlier this year for investigative reporting and feature writing. He is a graduate of Bard College at Simon’s Rock, in Great Barrington, Mass. Contact him at [noliver@virginiamercury.com](mailto:noliver@virginiamercury.com)



## Report: Virginia rarely helps workers collect unpaid wages from deadbeat employers

By **Ned Oliver** - December 4, 2019



*Ronaldo Vasquez, a 21-year-old construction worker who lives in Fredericksburg, says his employer never paid him for two weeks of work and the state agency that was supposed to help him recover those lost wages was little help. (Ned Oliver/Virginia Mercury)*

Ronaldo Gonzalez Vasquez says his employer owed him two weeks of pay when his once-reliable boss stopped responding to phone calls and text messages.

So the 21-year-old construction worker who had been building offices in Tyson's Corner and McLean turned to the state for help, filling out an unpaid wage claim with the Department of Labor and Industry, which is the sole recourse for many low wage workers attempting to recover money owed by employers.

The subsequent investigation yielded a glimmer of hope – his boss admitted to the officer assigned to the case that he owed at least a portion of what Gonzalez Vasquez was claiming – followed by a serious let down. The state said in a letter that that wasn't enough to collect.

“I didn't get anything,” Gonzalez Vasquez, who says he moved to the United States from Guatemala to study architecture. “That's not cheap. I pay my rent. I support myself. I need this money.”

Gonzalez Vasquez's experience is surprising, but typical, according to the Legal Aid Justice Center, which released an [analysis](#) last month that found the department

rarely recovers wages for workers while going easy on employers accused of wage theft.

The review, which included cases closed between January 2015 and May of this year, concluded:

- The state ordered employers to pay back wages in less than 19 percent of cases, or 736 of 3,948 claims.
- The state didn't investigate nearly half of the wage claims filed, dismissing 47 percent without a review, many times based on internal policies that block claims in cases where, for instance, a worker received tips, had a written contract, or consulted a lawyer about their case.
- The department almost never holds employers it finds have committed wage theft accountable beyond seeking repayment, issuing just nine fines and referring no cases for follow-up by law enforcement.

"This has been a problem for a long, long time," said Nicholas Marritz, a Legal Aid Justice Center lawyer and co-author of the report. "It finally just got to the point where we found the situation to be just so intolerable that we didn't want to refer workers anymore because we just knew that nine times out of 10 the agency is going to find any reason to dismiss your case.

"We didn't want to give people false hope."

The Department of Labor and Industry declined to respond to questions about the report and its findings. In a series of emails exchanged over a two-week period, a representative also declined to comment on Gonzalez Vasquez's account of his experience or the response he received from the department. They also refused to make anyone from the department available to speak about the wage claim process generally.

"We are in the process of reviewing our wage-claim policies and procedures," said Jennifer Rose, a director with the department. "We will fully consider their recommendations as part of that process, along with Governor Northam's recommendations to combat worker misclassification. We look forward to working with (Legal Aid Justice Center) and others to ensure Virginia workers get the pay they deserve."

Under Virginia law, workers can sue employers for unpaid wages, but that approach rarely makes sense for low wage workers, for whom the cost of hiring a lawyer and lost time in court would outstrip any potential money recovered.

That leaves the Department of Labor and Industry as the primary recourse, and while Marritz acknowledges that not every claim filed is likely valid, he says it's not

plausible that only 18 percent over a four-year period were actionable.

The Legal Aid Justice Center offered about a dozen recommendations they say will improve outcomes for workers, all of which they say can be implemented immediately because the policies that are causing problems were developed internally and are not based on existing laws or regulations.

Among them: Do a better job determining if workers are correctly classified as independent contractors, give workers a chance to respond or provide additional information before claims are dismissed, allow workers to pursue wage claims against businesses that closed but have not filed for bankruptcy, stop rejecting claims from workers that received tips, consulted an attorney or had a written work contract.

They're also calling for the department to step up enforcement against employers who have been credibly accused of wage theft, with fines and additional referrals to law enforcement.

"There's basically no incentive for employers to pay their workers on time under Virginia law because the penalty is, 'Ok, fine, pay them late,'" Marritz says. "It's madness. It's got to change. But until that changes, DOLI can do a lot more without passing any new laws and regulations."

In Gonzalez Vasquez's case, Marritz says the employer should have been ordered to pay the \$400 he admitted to "probably" owing immediately while Gonzalez Vasquez was given an opportunity to present evidence justifying his claim for the full two weeks wages. And he argues that in the absence of any records kept by the employer, Gonzalez Vasquez's testimony alone should be enough to pursue a claim.

Instead, Gonzalez Vasquez received a one-paragraph reply in the mail that said he would have to pursue the case in court. It requested a response within five days without indicating what if any information the case officer was seeking. And, in either case, Gonzalez Vasquez was out of the country when it arrived and couldn't respond within the timeframe.

"Workers like Ronaldo did their job," Marritz said. "All we're asking is for (the department) to do their's."

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